

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. TCPB MARKETING, INC., Respondent.	DOCKET NO. FCU-04-22
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**ORDER DOCKETING FOR FORMAL PROCEEDING
AND REQUESTING RESPONSE**

(Issued June 18, 2004)

On May 14, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution in C-04-69, involving TCPB Marketing, Inc. (TCPB), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On March 17, 2004, Mr. Keith Eberle of Eberle Data Systems (Eberle Data) filed a complaint with the Board alleging that Eberle Data's long distance service was changed without his authorization. Mr. Eberle indicated that he received a phone call from a representative of a company called Consolidated Billing. According to Mr. Eberle, the caller said that Consolidated Billing was affiliated with Qwest Corporation (Qwest) and could lower taxes and surcharges pursuant to an agreement with Qwest. Mr. Eberle agreed to the offer and submitted to the third-party verification process.

Board staff identified the matter as C-04-69 and, pursuant to Board rules, on March 18, 2004, forwarded the complaint to TCPB for response within ten days.

The Board received TCPB's response to the complaint on March 30, 2004. TCPB indicated that an independent sales agent solicited the order to change Eberle Data's long distance service to TCPB and that Mr. Eberle authorized the switch. TCPB's response included a copy of a recording of the third-party verification.

On May 5, 2004, Board staff issued a proposed resolution describing these events. Staff concluded that Mr. Eberle cooperated with the third-party verification process due to misleading information from the telemarketer that the purpose of the call was to change Mr. Eberle's bill. Staff concluded that Eberle Data's long distance service was slammed. Staff noted that Eberle Data's TCPB account was credited in full and closed and that TCPB placed Eberle Data's telephone number on its "Do Not Solicit" list.

In its May 14, 2004, petition, Consumer Advocate asserts that a civil penalty should be imposed against TCPB to deter future slamming violations. Consumer

Advocate asserts that TCPB has a history of prior violations. Consumer Advocate requests that the Board docket this complaint for a formal proceeding. TCPB has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds that there is sufficient information to warrant further investigation in this matter. The Board will delay establishing a procedural schedule until July 14, 2004, and allow TCPB an opportunity to respond to the allegations raised in Consumer Advocate's petition.

IT IS THEREFORE ORDERED:

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on May 14, 2004, is granted and docketed for formal proceeding.
2. TCPB Marketing, Inc., is requested to file a response to Consumer Advocate's petition on or before July 14, 2004.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of June, 2004.